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# THE WOMEN'S LEGAL RIGHTS INITIATIVE

**THE NEW LAND LAW BROCHURE - LESOTHO**

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# **THE WOMEN'S LEGAL RIGHTS INITIATIVE**

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# The New Land Law

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# THE NEW LAND LAW

## THE LAND BILL

### A. Pre-amble

The Government of Lesotho has been working on the exercise to reform the law governing the administration of Land as an economic resource in Lesotho.

The Exercise took off in a Commission's work. The Commission was led by Hon. Judge Ramolibeli, and it produced the Land Law Reform Commission's Report of 2000.

As a sequel to the report government has produced a new Land Bill, which shall herein be simplified into a user-friendly version for use by all interested persons.

### B. The Land Bill

A primary question is: who have interest in land and why? The same question when focused upon orphans and vulnerable children would be modified to be: how does the new Land Bill affect these children? The next chapters are an endeavor to answer these and many other questions that will arise in the discussion of this law.

A quick answer would seem to be: every person needs a place to live in. Thus everyone has an interest in land. For purposes of governance, government is the overseer of land matters and it is in this respect the one responsible for land management.

It is because of this overseeing role that, governments of all times have made written law to regulate land matters.

Such laws include, without being limited to the following: -

- The Constitution of Lesotho 1993
- The Land Act 1979 (as amended)

- The Land Registration Act 1967
- The Deeds Registry Act 1967
- The Local Government Act 1996
- The Forestry Act 1998
- The Environment Act 2001
- Exclusive to land in rural areas the Customary Laws & practices.

### **C. Brief Historical Background**

Around 2000 it appeared to government that there were problems in land matters. Following the making of recommendations for reform by the Ramolibeli Commission, government embarked on an exercise of making new law to regulate land matters. This is the land Bill yet to be assigned a gazette number and a date of coming into effect after it has been passed as law by Parliament.

### **D. A summary of the Land Bill**

The stated objectives of the land Bill are to achieve the following:

- to provide for the grant of titles,
- to facilitate the conversion of land titles,
- the better securing of titles to land,
- the management of land,
- the grant of public servitudes,
- the settlement of disputes relating to land
- to repeal laws which hitherto regulated land matters
- and to do all other purposes related to land.

## **Parts of the Bill:**

The Bill is divided into the following parts

1. Interpretations of words and phrases found in the body
2. Fundamental Principles of Land Policy
3. Title to Land
4. Land Administration
5. Rights & incidents of title to land
6. Forms of Leases
  - i) Registrable Leases
  - ii) Qualified Leases
  - iii) Demarcated Leases
  - iv) Primary Leases
7. Adjudication of interests in Land
8. Regularization of occupation to land in Urban & peri-urban areas
9. Public servitudes
10. Dispute settlement
  - i) Land Courts
  - ii) Alternative Dispute Settlement
  - iii) The Mediator
  - iv) Dispute Settlement Between two parties
11. Rights and opportunity to be heard
12. Inheritance

Each one of these parts of the Land Bill is summed up in simplified form herein below:

### **PART I: INTERPRETATION OF WORDS USED IN THE LAND BILL**

Here selected words and phrases are defined in the context in which they are used in the Bill. This is done in all written laws. The list of such words shall not form part of this work. For further references to this part, one may refer to S. 2 of the Bill. That being as it may reference shall be made in this work in order to define unusual words and phrases, which are peculiar to this law.

## **PART II: FUNDAMENTAL PRINCIPLES OF LAND POLICY**

The objective of the Act is to promote the principles of the land policy. Every person who exercises powers under the Land Bill is expected to keep these principles in mind when doing so. The Act makes specific mention of ten such principles. These principles aim at achieving the following:

- Poverty reduction
- Lawful security of tenure
- Access to land by all
- Regulation of size of land
- Sustainable development
- Compensation for revoked land lawfully held
- Accountability, efficiency, economic & transparent land administration
- Shared decision making process
- Just system of handling disputes in land
- Education & dissemination

Further to the above, the Bill protects the rights of women specifically by placing them on the same footing as their male counterparts. Women in terms of this law, must be afforded the same treatment as men. To this end in dealing with the rights of women in land, the anti - discrimination law provided under Article 19 of the Constitution of Lesotho shall be invoked. Any provision that is contrary to Article 19 of the Constitution of Lesotho shall be unto itself invalid.

Article 19 of the Constitution of Lesotho provides for equality before the law and equal protection of the law.

## **PART III: TITLE TO LAND**

Part III of the Bill comprises of 3 sections, being sections 4 - 6 inclusively.

In terms of this part, land as a commodity is held by the nation in the custody of His Majesty the King. Title to land comes only in the name of the King. Everybody else holds title to land only in accordance with the provisions of the Land Bill (once it has become law) and/or in accordance with customary law.

The provisions of the Land Bill take precedence over any other practice or law in the event that there is contradiction between any of those and the Land Bill. The only law that shall be superior to the Land Bill is the Constitution of Lesotho.

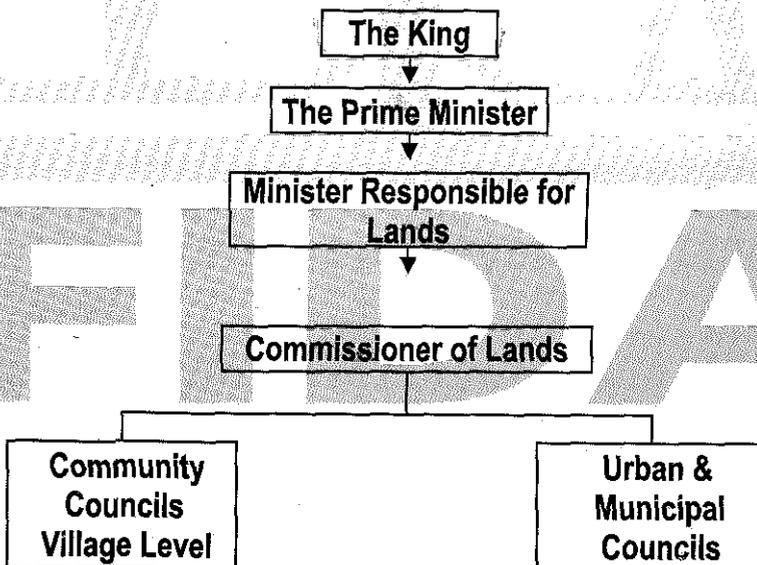
The power to grant title to land is delegated by the King to those who are bestowed with the duty to administer land matters. To be granted title to land one has to be an adult citizen of Lesotho, either by birth or through naturalisation.

#### **PART IV: LAND ADMINISTRATION**

Like in all government affairs, the King executes his mandate through his government. At the head of government is the Prime Minister who delegates powers to manage land affairs in the Minister responsible for land affairs. Currently this Ministerial responsibility lies in the hands of the Minister of Local Government.

At Public Service level Land affairs are managed by the Commissioner of Lands whose office is in Public Service. It is the Commissioner of Lands' duty to assist and or give advise to local authorities in land matters.

The hierarchy of government in land administration is as follows below:



The composition of the Councils is described under S. 4 of the Local Government Act 1996.

## **PART V: RIGHTS & INCIDENTS OF LAND OCCUPATION**

The right to hold, occupy and use land is granted through a lease or a derivative right. The phrase derivative right means a right obtained by virtue of being some-one else's successor.

### **Part VI: FORMS OF LAND LEASE**

#### **i) Registrable Leases**

The Statute differentiates between a lease, which is registrable in that it is required to be registered under the Deeds Registry Act 1967 to be valid; and a

#### **ii) Demarcated Leases**

Which is granted by a local authority on behalf of the Head of State. This lease should be capable of being recorded in a local registry.. [To demarcate is to mark out and fix a boundary]. This title is capable of disposition, in as much as it is inheritable, and transmissible by Will.

#### **iii) Qualified & Primary lease**

Further to these two, the Land Bill also provides for a Qualified lease and a Primary lease. A qualified lease is issued where application has been submitted for a registrable lease but for reasons as shall be stated by the Chief Surveyor a full survey of the land has not been effected.

A primary lease on the other hand obtains in land held in accordance with customary law. A primary lease has a term equivalent to the lifetime of the holder and that of his spouse. It is applicable to all

unregistered occupation at the time of coming into force of the Bill, if such occupation was lawfully acquired.

The length of a term of a primary lease in the rural areas shall be perpetual and in places not rural areas, it shall be for a period of up to ninety years. In urban areas the initial length of a term of a primary lease shall be thirty years and may be extended upon notice made five years before the subsisting lease's expiry.

The Bill, specifically under S. 25(7), renders as of no effect, the treatment of women in a manners less favorable than men's, the section further prohibits any sanction interest or loss of or termination or derogation from any interest in land of any person without first giving that person an opportunity of being heard as to why such termination or derogation should not take place.

#### **A. How May A Lease Be Obtained**

An application for a lease shall be made on a prescribed form and where applicable upon payment of a prescribed fee.

Local authorities are expressly prohibited under S. 35(5) from requiring any applicant who is a woman to provide any evidence that consent to her application has been given by, or to obtain the consent to her application of, a male member of her family, or if she is married, her husband or the family of her husband.

S. 36(2)(c)(i) and (ii) provides that the authority that determines a lease application shall treat an application from a woman, a woman headed family, or a group of women, no less favorable than an equivalent application from male equivalents; and shall not discriminate against women in practice or in attitude.

Authorities shall charge ground rent, save to say that citizens shall, pursuant to S. 44 of the Bill, not pay ground rent on land occupied for residential purposes.

#### **B. Disposition Of Leases**

Disposition means the alienation of a right to land either through a sub-lease; a mortgage bond; creation of a servitude; cession, transfer; exchange from one

person to another or to others. Disposition must be authorized by the authority responsible for land matters.

In particular disposition of primary and demarcated leases, shall go through a process leading to approval by a local authority. However, where the value of the land disposed off is equivalent to a small mortgage the approval of a local authority shall not be required.

To either allow or disallow a disposition, an arm of the Land Market Authority established under this Land Bill for purposes of regulating transactions in land, shall be guided by amongst others, the need to ensure that the special needs of women and orphans for land within the area at issue is and will continue to be adequately met; and the needs to ensure that the needs of landless people within the area will continue to be adequately met.

Also the act of assigning a lease shall be governed by considerations which the authority must have with regards to, whether

- The one assigning the lease will retain sufficient land to provide for the needs of those dependent on the assigner; or
- the proposed assignment will assist the assignee to provide for dependents; and thirdly,
- the assignee will thereafter occupy land in excess of the prescribed maximum land, which may be occupied by a person in that area.

The local authority must also take due cognisance of any advice received from any person or organisation which may have been consulted. One thinks of organisations such as the Federation of Women Lawyers (FIDA) in cases where the interests of women as well as orphaned and vulnerable children are concerned.

Also the local authority should in addition take cognisance of any advice or information, which may have been given by any department of government. Such departments may include the office of the Master of the High Court, the Department of Social Welfare, and or any other which may have interest in the matter.

### **C. Surrendering A Lease**

A holder of a lease may surrender his rights in a lease; provided that such surrender does not have the effect of perpetuating the erstwhile common-law discrimination of women qua women.

### **D. Re-Grant Of A Surrendered Lease**

A surrendered lease shall first be made open to a spouse before being put up for grabbing by other members of society.

## **PART VII: ADJUDICATION OF INTEREST IN LAND**

For allocation of land to take place, it is the responsibility of a local authority to first adjudicate it.

To adjudicate means to undertake a process through which the adjudicator establishes, recognizes and or confirms with certainty and finality with respect to any particular plot the existent rights and limitations thereto in respect of specified individuals.

Adjudication over land in rural areas shall be carried out by the local Councils.

Any person who is aggrieved by the results of an adjudication process may take the matter to a local land court, which for purposes of this Act is the Local Court in the ordinary sense.

## **PART VIII: REGULARIZATION OF OCCUPATION OF LAND IN URBAN AND PERI-URBAN AREAS.**

This may be regularized in accordance with the provisions of this Act.

## **PART IX: PUBLIC SERVITUDE (PUBLIC RIGHT OF WAY)**

Where the declaration of a right of way affects an individual's rights, such an individual shall be entitled to compensation by the authority, which applied for

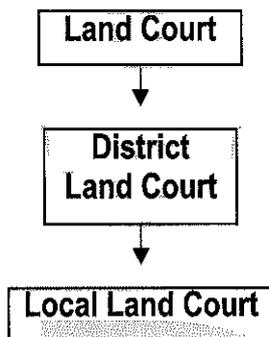
right of way, provided the land in question has not been replaced. In cases where there are grievances arising out of a disagreement regarding the extent and amount of compensation, the aggrieved party may take the matter to a local court which may, determine the amount for compensation with costs.

## **PART X: DISPUTE SETTLEMENT**

Hitherto the promulgation of the Land Bill, land disputes were handled either by the Land Tribunal, or by any court of law which had jurisdiction over the matter.

### **A. THE LAND COURTS**

Disputes may arise between an individual and the State over land occupation, in as much as it may also arise between two or more individuals. For the resolution of such disputes the Land Bill introduces a new concept of Land Courts. The structure of the Land Courts is cut along the existing structure of the Courts' system in Lesotho subject to a slight modification. The structure takes the following form:



### **B. Alternative Dispute Resolution**

The existence of the Land Courts notwithstanding, aggrieved parties are not prohibited from settling their grievances through alternative means. In particular, the Bill acknowledges dispute resolution through the exercise by traditional authorities of alternative dispute resolution functions.

This use of such alternative dispute resolution mechanism may come about following advise from a presiding officer in a court of law.

## **B. THE MEDIATOR**

The Land Bill creates the office of a Mediator, who shall be an appointee of the Judicial Service Commission, and qualified enough to be able to be appointed a High Court Judge.

The choice of engaging a Mediator shall be made by the parties themselves, and no person may be compelled to do so. Mediation may take place at local levels. To this end Community Council within the Local Government structure may establish a Community Mediation Panel. This panel shall comprise of between seven and ten members, of whom three shall be women.

## **PART XI: THE RIGHT & OPPORTUNITY TO BE HEARD**

Assuming that the disputes arises between the authorities responsible for land matters and an individual, the law is that it is the right of every person affected by this law to be given an opportunity to be heard in cases where his or her rights to land are at the risk of being disposed off. This means that a person must be informed in writing, of the intended action concerning the land, the time when the intended action shall occur, which must allow a least fourteen days between the date of notice and the date of the occurrence. The party must also be informed of the place of hearing. The party may be represented by a lawyer.

Response to the notice may be in writing in the form of a statement, or if he or she so wishes, may indicate that he/ she does not wish to be heard or submit a statement. It must be noted that choosing not to be heard or to submit a statement may be prejudicial to the case of the person.

People are therefore advised to seize the opportunity to be heard where ever and whenever it presents itself. Failure to do so may mean that one's side of the story is not heard.

## **PART XII: DISPUTE SETTLEMENT BETWEEN TWO PARTIES**

Between individuals where any two parties claim the same right, their dispute may be taken to the land court. In coming to a decision the court will take into consideration the circumstances surrounding the occupation in dispute. Examples of such circumstances are: to what use was the land put; and whether there are any dependents related to, and living with the person who has to vacate the piece of land.

## **PART XIII: INHERITANCE**

The right to land occupation may be inherited by a spouse following the death of the occupier. Land left in the hands of minor children in circumstances where both parents predeceased the children, may be put under trusteeship of a surviving adult relative, who shall administer it on behalf of the children.

Rule 9 of the 3rd Schedule of the Land Bill provides that rules under the Bill do not absolve the estate of a deceased lessee, who died interstate, from being liable to meet the debts of the deceased.

The rule has great implications regarding property grabbing by the surviving relatives, especially in case where the deceased died indigent but for his title to land; and such a deceased person is also leaving behind a spouse and/or minor children.

The 3rd Schedule should be read together with the 1st schedule, which provides, under Rule 14, that a subdivision, or sublease, or any act that makes the lessee to part with the possession of the land, shall only be made with the approval of the Commissioner.

The application of the two schedules are subject to the provision of the statute on the disposition of land: which provides that an authority responsible for the authorisation of land disposition, in allowing or disallowing a disposition shall be guided by the need to ensure that the needs of women and orphans, for land, within the area at issue are and will continue to be adequately met.

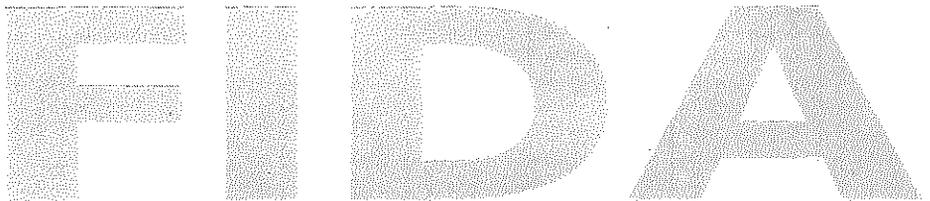
## Duties of a trustee who holds lands on behalf of minor children

Although not stipulated in the land Bill, duties of a trustee are very clear under common law and may not be flouted. They are:

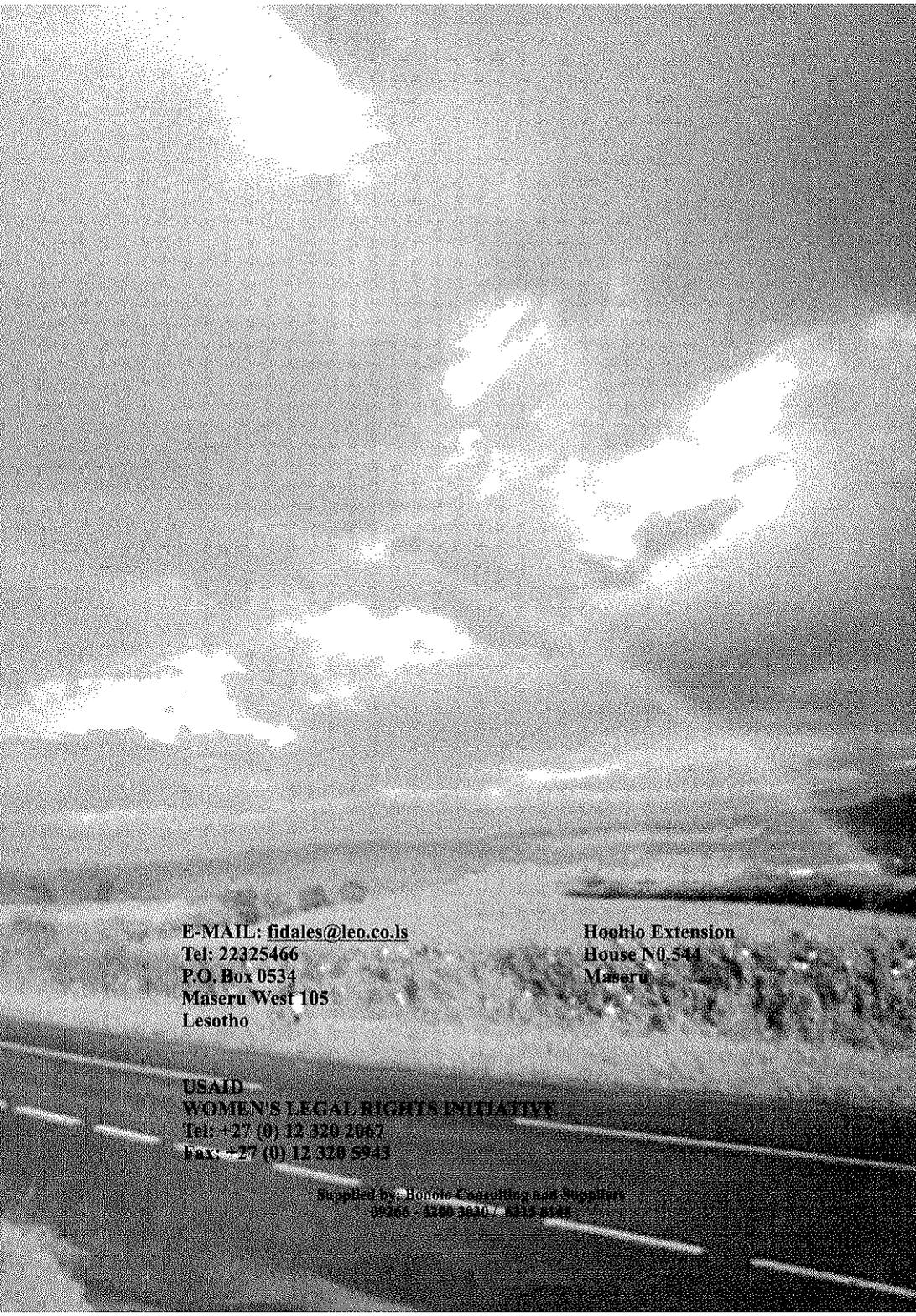
- he must maintain a clear record of all incidents of his trusteeship;
- the record must be available for inspection.
- he must be in a position to account for his trusteeship should he be required to do so by the Master of the High Court.

A person entrusted with the property of minor children, may not under the common law sell or mortgage land under his care.

Where aggrieved, minor children or any other relative may report misadministration to the office of the Master of the High Court. The Master has powers to take the matter to the High Court for the Court to remove the trustee from his trusteeship.



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